

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CHOSEN ONE JA'MIMA'NI	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05-11238-GAO
	)	
COMMONWEALTH OF MASSACHUSETTS,	)	
Defendant.	)	

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's application to proceed without prepayment of fees is denied without prejudice. If plaintiff submits a new, fully-completed application to proceed without prepayment of the filing fee, she shall also demonstrate good cause why this action should not be dismissed for the reasons stated below.

BACKGROUND

On July 8, 2005, plaintiff Chosen One Ja'mima'ni submitted for filing his self-prepared, handwritten complaint against the Commonwealth of Massachusetts accompanied by an Application to Proceed Without Prepayment of Fees. Plaintiff alleges that on June 19, 1998, he was arrested and charged with murder. He further alleges that in 2001 he was found not guilty of the charges but was not released until 2004 because he was deemed to be a danger to himself and others. Plaintiff complains that he was severely beaten by guards while in the custody of the Massachusetts Department of Correction. He complains he has been treated pursuant to "Dred Scott" and "the Acts to Bury Negroes and Strangers." Plaintiff references an earlier civil action he

filed in this Court explaining that his case was dismissed in November 2004 due to an error concerning his current address. See Chosen one Ja'mima'ni v. Commonwealth, C.A. No. 05-11238-GAO (dismissed Nov. 22, 2004).

#### DISCUSSION

##### I. The Application to Proceed Without Prepayment of Fees

A party filing a civil action in this Court must either (1) pay the \$250 filing fee for civil actions or (2) seek to be granted in forma pauperis by filing an application to proceed without prepayment of the filing fee. See 28 U.S.C. § 1914 (filing fee for civil actions); Fee Schedule for the District of Massachusetts; 28 U.S.C. § 1915 (proceedings in forma pauperis). For the convenience of litigants, this Court provides a standardized, double-sided form for fee waiver applications entitled "Application to Proceed Without Prepayment of the Filing Fee and Affidavit."

Plaintiff failed to fully answer questions two and three on the application to proceed without prepayment of fees. See Application, Docket No. 1. Question two on the form asks litigants if they are employed. See Question No. 2. Although plaintiff reveals the fact that he is not employed, he has failed to reveal the date of his last employment, the amount of his take-home salary or wages and pay period, and the name of his last employer. See Question No. 2(b).

Although plaintiff indicates in Question 3(d) that he

receives disability benefits, he failed to answer Questions 3(a), 3(b), 3(c), 3(e) and 3(f). Because the application is incomplete, I cannot make a determination whether plaintiff qualifies for in forma pauperis status and will deny it without prejudice. I will grant plaintiff additional time to submit a new, fully-completed application.

## II. Plaintiff's Complaint is Subject to Dismissal

When a plaintiff seeks to file a complaint without prepayment of the filing fee, summonses do not issue so that the Court may conduct a preliminary review of the complaint and determine if it satisfies the substantive requirements of Section 1915.. See 28 U.S.C. § 1915. A district court may dismiss a complaint filed in forma pauperis "at any time" if the court determines that the action lacks an arguable basis in law or fact, seeks relief against a defendant who is immune from liability, or fails to state a claim. Neitzke v. Williams, 490 U.S. 319, 325 (1989) (interpreting the former § 1915(d)); 28 U.S.C. § 1915(e)(2)(b). In forma pauperis complaints may be dismissed sua sponte and without notice under Section 1915 if the claims are based on an indisputably meritless legal theory or factual allegations that are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) Here, plaintiff's claims are subject to dismissal.

As an initial matter, plaintiff's complaint fails to conform with the Federal Rules of Civil Procedure. Pursuant to Rule

10(b), "[a]ll averments of claim . . . shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances . . ." Fed. R. Civ. P. 10(b). Here, plaintiff's complaint fails to include any factual allegations specifying the circumstances of his alleged mistreatment while in custody at MCI Bridgewater. To the extent plaintiff seeks monetary damages from the Commonwealth, the Eleventh Amendment<sup>1</sup> generally is recognized as a bar to suits against a State, its departments and agencies unless the State has consented to suit. Alabama v. Pugh, 438 U.S. 781, 781 (1978) (per curiam). Unless a State has "waived its Eleventh Amendment immunity or Congress has overridden it, . . . a State cannot be sued directly in its own name regardless of the relief sought." Kentucky v. Graham, 473 U.S. 159, 167 n. 14 (1985) (citing Pugh). Here, the Commonwealth has not consented to suit, see Brown v. Newberger, 291 F.3d 89, 92 (1<sup>st</sup> Cir. 2002) (stating that there has been no unequivocal abrogation of the Commonwealth's Eleventh Amendment immunity). Thus, the Eleventh Amendment bars plaintiff's suit against the Commonwealth. See

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<sup>1</sup>The Eleventh Amendment to the United States Constitution provides that:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. Amend. XIV.

Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 142-144 (1993) (11<sup>th</sup> Amendment operates as a withdrawal of jurisdiction).

CONCLUSION

ACCORDINGLY, plaintiff's application to proceed without prepayment of fees is DENIED without prejudice. If plaintiff wishes to proceed with this action, he shall, within 35 days of the date of this Order, (1) submit a new, fully completed application to proceed without prepayment of fees and (2) demonstrate good cause, in writing, why this action should not be dismissed for the reasons stated above. If plaintiff fails to submit a new application or demonstrate good cause, this action will be dismissed without prejudice.

SO ORDERED.

Dated at Boston, Massachusetts, this 12th day of July, 2005.

/s/ George A. O'Toole, Jr.  
GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE